

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: Leonard J. Mainiero : CHAPTER 13
Roberta K. Mainiero :
Debtors :
: NO. 21-12205 MDC

HEARING: 12-7-21
TIME: 10:30 a.m.

**DEBTOR'S MOTION PURSUANT TO 11 U.S.C. SECTION 506(a) and
BANKRUPTCY RULE 3012 TO DETERMINE THE VALUE OF SECURITY
AND CREDITOR'S ALLOWED SECURED CLAIM**

The Debtors, Leonard and Roberta Mainiero, by their attorney, Michael A. Latzes, Esquire requests this Court pursuant to 11 U.S.C. Section 506 (a) and Bankruptcy Rule 3012 to determine the value of the interest of the Department of Treasury - Internal Revenue Service in Debtors' property located at 103 Camsten Court, Chesterbrook, Pennsylvania 19087 and determine the amount of allowed secured claims. In support of this motion the debtors state as follows:

1. The Debtors are adults whose residential residence is located at 103 Camsten Court, Chesterbrook, PA 19087. (hereafter known as "the property")
2. Creditor, Department of Treasury-Internal Revenue Service (hereafter known as the "I.R.S.") lists one subordinate lien in their Amended Proof of Claim filed on October 15, 2021. (copy of the Amended I.R.S.' Proof of Claim is attached hereto and marked as Exhibit "A".)
3. The I.R.S.'lien, referred to above, including interest and penalty for tax year 2011, totals \$57,090.00. An additional assessment for interest is included in the Proof of Claim for \$4,459.55, resulting in a total secure claim of \$61,549.95.

4. The creditor, Deutsche Bank National Trust Company, as trustee for FFML Trust 2005-FF 11, Mortgage Pass-Through Certificates, Series 2005-FF11 c/o Specialized Loan Servicing, LLC are the purported holder of the first mortgage and the purported servicer of the first mortgage. (hereafter known as “the mortgagee”)

5 . The mortgagee filed a Proof of Claim on August 30, 2021, listing a secured claim in the amount of \$335,848.07 (copy of mortgagee’s Proof of Claim is attached and marked as Exhibit “B”)

6. On August 11, 2021, Debtors commenced this case by filing a voluntary petition under Chapter 13 of the Bankruptcy Code, which has been assigned Docket No. 21-12205 MDC.

7. This Court has jurisdiction to hear this matter under 28 U.S.C. Section 157 and 1334. It is a core proceeding.

8. On or about August 15, 2005, Debtor and Mortgagee entered into a mortgage loan transaction. The Promissory Note was secured by the first mortgage as a first mortgage lien against the property. (Copy of the Mortgage and Promissory Note are attached hereto and marked Exhibits “C “ and “D”).)

9. At the present time the fair market value of the real property is \$355,000.00. (copy of Zillow Statement of Value is attached hereto and marked as Exhibit “E”).)

10. The remaining value of Debtors’ personal property is \$15,350.00. (refer to Debtors’ Schedule B/C).

11. The value of the I.R.S.’ interest in the property can be no greater than the fair market value of the property, less all pre-existing liens attached to the property, pursuant to 11 U.S.C Section 506(a), a total of \$34,501.93. (\$355,000.00 plus \$15,350.00 less \$335,848.07)

12. The balance of the remaining secured claim is allowable only as an unsecured claim.

13. Therefore the allowable I.R.S. secured claim against the property is \$34,501.93 and the allowable unsecured portion is \$27,048.02. (\$61,549.95 less \$34,501.93)

WHEREFORE, the Debtors respectfully request that the Court:

- a. Value the interest of Debtors' home at \$355,000.00 and debtors' personal property at \$15,350.00.
- b. Determine that pursuant to 11 U.S.C. Section 506(a) and (d), the Internal Revenue Service only have an allowed security interest in the debtor's real and personal property in the amount of \$34,501.93 and that any claim over that amount be deemed as an allowed unsecured claim.

/s/ MICHAEL A. LATZES, ESQUIRE

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